



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

August 9, 2021

Hon. Gabriel W. Gorenstein
United States Magistrate Judge
United States District Court
40 Foley Square
New York, New York 10007

MEMORANDUM ENDORSEMENT

Re: *Schulte v. BOP*, 20 Civ. 2795 (PGG) (GWG)

Dear Judge Gorenstein:

I write respectfully on behalf of the federal defendant (“the Government”) as well as the seven individually named defendants in this matter. I write in response to the Court’s order dated August 3, 2021, requesting that the Government provide the status of this case by August 10, 2021, because the defendants appear to have been served but no answer or motion has been filed. [ECF No. 54]. I respectfully request a *nunc pro tunc* extension of time, until October 11, 2021, to respond to the amended complaint for all of defendants, upon confirmation that the individual defendants were served with the amended complaint.

In this matter, Plaintiff, appearing *pro se*, filed an amended complaint on March 29, 2021. Thereafter, the amended complaint was sent to the U.S. Marshal’s Service for service of process. According to ECF, the U.S. Marshal’s executed service to the individual defendants between March 29, 2021 and June 3, 2021, by sending a copy of the summons and amended complaint to FCI Schuylkill’s post office box.¹ The U.S. Marshal’s Service filed proof of service for all of the defendants on ECF on June 11, 2021. Unfortunately, due to an oversight, I did not realize that the defendants had been served or calendar their deadline to respond, and due to a communication gap between the defendants, agency counsel and myself, I was not in communication with the defendants about the service of the amended complaint. I profusely apologize for this error. Since the Court’s order, I have reached out to all of the individual defendants via email, but only two of the defendants have responded. In speaking with one of the individual defendants, I learned that some of the other defendants work the night shift or are on vacation, and I am continuing to attempt to contact them. As Plaintiff’s claims relating to the United States and the individual defendants are premised on the same set of facts, I respectfully request that the Court grant until October 11, 2021, for all of the defendants to respond to the amended complaint.

This is the defendants first request for an extension of time to respond to the amended complaint. As the plaintiff is incarcerated, I was not able to obtain his consent to this request.

We thank the Court for its consideration of this request.

¹ I have not been able to confirm whether many of the individual defendants have been served.

Respectfully submitted,


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The length of time requested is excessive and not justified by anything in this letter. Each defendant shall, by August 27, 2021, either (1) file an Answer, (2) file a letter indicating that the defendant has been properly served and intends to file a motion to dismiss before Judge Gardephe (and seeking a specific and reasonable date for the filing of such a motion), or (3) file a letter indicating that proper service has not been made and why this is so. There will be no further blanket extensions of this date. If an individual defendant seeks an extension of the August 27, 2021, date, it shall do so by means of a memorandum of law accompanied by an affidavit.

So Ordered.



GABRIEL W. CORENSTEIN
United States Magistrate Judge
August 9, 2021

COPY MAILED TO PLAINTIFF BY CHAMBERS.